

STATE OF MICHIGAN
COURT OF APPEALS

KEVIN L. DOKES,

Plaintiff-Appellant,

v

22ND DISTRICT COURT,
VALDEMAR L. WASHINGTON, and
PAMELA A. ANDERSON,

Defendants-Appellees.

UNPUBLISHED

July 18, 2013

No. 310604

Wayne Circuit Court

LC No. 11-007597-CK

Before: FITZGERALD, P.J., and MURRAY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendants in this action alleging breach of contract and promissory estoppel. We affirm.

In August 2010 Judge Sylvia James offered plaintiff a full-time position as a court officer at the 22nd District Court in Inkster, Michigan. Plaintiff alleged that Judge James, who was then the chief judge, promised him before he accepted the offer of employment that “as long as you do the job, you’ll have a job.” In October 2010 defendant Pamela A. Anderson, the 22nd District Court’s administrator, allegedly provided plaintiff with a letter, purportedly authorized by Judge James,¹ to assist him in obtaining an apartment. The letter stated that “we are committed to seeing that your employment here at the 22nd District Court in Inkster is secured until such time you decide to retire and/or leave us again.” Also in October 2010, plaintiff and Anderson signed a document labeled “Personnel Action Form.” The form labeled plaintiff as a “permanent (regular)” employee.

On April 13, 2011, Judge James was placed on administrative leave and defendant Judge Valdemar Washington became the interim chief judge of the 22nd District Court. Plaintiff’s employment was terminated after it was determined that he could not carry out his duties as a

¹ Judge James denied authorizing the letter, and Anderson denied signing it on behalf of Judge James.

court officer. Plaintiff filed the present action in which he alleged that Judge James' oral and written assertions established a just-cause employment contract. Plaintiff also alleged that the doctrine of promissory estoppel entitled him to wages until he reached the age of retirement. The trial court granted summary disposition of the breach of contract claim in favor of defendants on the ground that the alleged employment contract would be in violation of public policy. The trial court also granted summary disposition of the promissory estoppel claim on the ground that plaintiff failed to present evidence to create a question of fact with regard to whether plaintiff relied on Judge James' alleged promises.

This Court reviews a trial court's determination regarding a motion for summary disposition de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). It is apparent that the trial court granted the motion under MCR 2.116(C)(10) because it considered information beyond the parties' pleadings. *Healing Place at N Oakland Med Ctr v Allstate Ins Co*, 277 Mich App 51, 55; 744 NW2d 174 (2007). In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), this Court considers "affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, in a light most favorable to the party opposing the motion." *Smith*, 460 Mich at 454-455 (citation omitted). A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue with respect to any material fact, and that the moving party is entitled to judgment as a matter of law. *Id.*

In granting summary disposition, the trial court ruled that plaintiff's alleged employment contract contravened public policy and was void. In identifying the boundaries of public policy, "the focus of the judiciary must ultimately be upon the policies that, in fact, have been adopted by the public through our various legal processes, and are reflected in our state and federal constitutions, our statutes, and the common law." *Terrien v Zwit*, 467 Mich 56, 66-67; 648 NW2d 602 (2002). Public policy must be clearly rooted in the law in such a way that it is not only "explicit," but also "well defined and dominant." *Id.* at 67-68.

Despite defendants' arguments to the contrary, this Court has found no "well defined and dominant" indications in Michigan law to justify the invalidation of the alleged just-cause employment contract on public policy grounds. Rather, in Michigan, freedom of contract is highly regarded, *Morris & Doherty v Lockwood*, 259 Mich App 38, 54; 672 NW2d 884 (2003), and case law reflects that contracts for an indefinite term of employment are not "against public policy and beyond the power of the employer to contract," *Toussaint v Blue Cross & Blue Shield of Mich*, 408 Mich 579, 611; 292 NW2d 880 (1980). While contracts for an indefinite period of time are presumptively construed to prove employment at will, *Bracco v Michigan Technological Univ*, 231 Mich App 578, 595; 588 NW2d 467 (1998), this presumption can be overcome by offering proof that the parties intended to enter a just-cause employment contract, *Rood v General Dynamics Corp*, 444 Mich 107, 117; 507 NW2d 591 (1993). We find that public policy considerations do not preclude enforcement of the alleged employment contract

and the trial court erred by granting summary disposition on this ground.² Nevertheless, we find that summary disposition in favor of defendants is appropriate.

Under Michigan law, contracts “for permanent employment are for an indefinite period of time and are preemptively construed to prove employment at will.” *Bracco*, 231 Mich App at 595. However, a plaintiff can overcome the presumption of employment at will by way of an express agreement, either written or oral, regarding job security that is clear and unequivocal, or by way of a contractual provision, implied at law, where an employer’s policies and procedures instill a legitimate expectation of job security in the employee. *Lytle v Malady*, 458 Mich 153, 164; 579 NW2d 906 (1998).

To establish mutual assent to create a just-cause employment relationship, an oral statement concerning job security must be “clear and unequivocal” and “must be based on more than an expression of an optimistic hope of a long relationship.” *Bracco*, 231 Mich App at 595-596. Further, it is necessary to focus on how a reasonable person in the position of the promisee would have interpreted the promisor’s statements or conduct. *Rood*, 444 Mich at 108. Of central importance is whether the employer made statements concerning job security in the context of negotiating with the employee. *Bracco*, 231 Mich App at 598.

To establish his claim that an express just-cause employment contract was created, plaintiff relied, in part, on Judge James’ statement that plaintiff would have a job as long as he did his job. This statement is not definite enough to constitute “a clear and unequivocal” offer of job security. See *Rowe v Montgomery Ward*, 437 Mich 627, 645; 473 NW2d 268 (1991). Further, because there is no evidence on the record that plaintiff and Judge James engaged in preemployment negotiations or that this statement was in response to plaintiff’s concerns about job security, reasonable minds could not determine this statement demonstrated intent to create a just-cause employment contract. Plaintiff also relied on the personnel action form that labeled him as a “permanent (regular)” employee to establish that a contract was created. However, the form was not signed within the context of negotiations for job security, and a reasonable juror could not find that the form constituted an offer for permanent employment. Similarly, the October 4, 2010, letter was not within the context of negotiations for job security. Notably, plaintiff testified that Anderson provided the letter and that it was authored solely to enable plaintiff to qualify for an apartment. Given the purpose for which the letter was written, reasonable minds could not find that the letter established intent to create a contract for just-cause employment. The evidence presented does not present a material question of fact as to whether mutual intent to create an express just-cause employment contract existed. Because we will not reverse a trial court’s order when the right result was reached for the wrong reason, we affirm the trial court’s grant of summary disposition as to plaintiff’s breach of contract claim. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Plaintiff also failed to create a material question of fact with regard to his assertion that Judge James’ statements created a legitimate expectation that employees would only be

² Because we have found that public policy did not invalidate plaintiff’s alleged contract, we need not consider plaintiff’s remaining arguments concerning this issue.

discharged for cause. This Court has recognized a two-step inquiry to evaluate legitimate expectation claims. *Lytle*, 458 Mich at 165. The first step is to decide “what, if anything, the employer has promised,” and the second step requires a determination of whether that promise was “reasonably capable of instilling a legitimate expectation of just-cause employment.” *Id.*

Plaintiff argued that Judge James typically told her employees that as long as they did their job, they would have a job and thus established a policy that employees would only be discharged for cause. In *Rood*, 444 Mich at 141, our Supreme Court held that an informal policy requiring “good reason” to discharge an employee, without more, is not definite enough to enforce as promise of just cause employment. Judge James’ purported promise to terminate only if an employee was not performing his duties is indicative of a promise to terminate for “good reason.” Accordingly, given the indefinite nature of the statement, a reasonable juror could not conclude that it gave rise to a legitimate expectation of discharge only for cause.

Plaintiff also argued that the personnel action form promised permanent employment to those who were designated as “permanent (regular)” employees. When considering the standard form on which this generic label appears and the fact that the term “permanent” is immediately followed by the term “(regular),” we find that a reasonable juror could not find that the form created a legitimate expectation of just-cause employment. Finally, plaintiff relies on the October 4, 2010, letter. Because legitimate expectation claims are generally based on promises to all employees, *Rood*, 444 Mich at 136-137, a letter directed only to plaintiff does not support his legitimate expectations claim. Moreover, given that this letter was drafted for the purpose of plaintiff obtaining an apartment and plaintiff did not see Judge James author or sign it, we find that a reasonable juror could not find that it created a reasonable expectation of just-cause employment. Because a material question of fact does not exist as to plaintiff’s legitimate expectations claim, summary disposition in favor of defendant was proper. *Taylor*, 241 Mich App at 458.³

Next, plaintiff argues that the trial court erred by granting summary disposition of his promissory estoppel claim. The elements of promissory estoppel are (1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee, (3) which in fact produced reliance or forbearance of that nature, and (4) under circumstances such that the promise must be enforced if injustice is to be avoided. *Novak v Nationwide Mut Ins*, 235 Mich App 675, 686-687; 599 NW2d 546 (1999).

Plaintiff alleged that he relied on Judge James’ promise that as long as he did his job, he would have a job when he moved from Georgia to Michigan. However, this is insufficient to establish the reliance necessary to support a promissory estoppel claim because relocation is a customary and necessary incident of changing jobs. *Marrero v McDonnell Douglas Capital*, 200 Mich App 438, 443; 505 NW2d 275 (1993). Plaintiff also alleged that he relied on the statements in the October 4, 2010, letter. However, because the record establishes that plaintiff

³ Because plaintiff has no contract claim to pursue, we need not consider his argument regarding the trial court’s ruling on the limitation of damages.

accepted the job in August of 2010, he could not have relied on the letter's statements. Further, because a prior relationship between the promisee and the promisor alone cannot support a claim of promissory estoppel, *id.* at 443, and there is no evidence in the record to support that the statements contained in the letter produced any additional reliance on the part of plaintiff, summary disposition was appropriate. *Smith*, 460 Mich at 454-455.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray
/s/ Amy Ronayne Krause